



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Acquisition of items for which Federal Prison Industries has a Significant Market Share

AGENCY: Department of Defense (DoD).

ACTION: Notice

SUMMARY: DoD is publishing the annual list of product categories for which the Federal Prison Industries' share of the DoD Market is greater than five percent.

EFFECTIVE DATE: April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Sheila Harris, telephone 703-614-1254.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2009, a final rule was published at 74 FR 59914 which amended the Defense Federal Acquisition Regulation Supplement (DFARS) 208.6, to implement Section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008, Public Law 110-181. Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater

than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 208.602-70.

This notification provides an updated list of FPI product categories exceeding five percent of the DoD market, based on Fiscal Year 2012 data obtained from the Federal Procurement Data System. An identical list is also found in the Director, Defense Procurement and Acquisition Policy (DPAP) memorandum dated March 7, 2013. (The DPAP memorandum with the current list of product categories for which FPI has a significant market share is posted at:

<http://www.acq.osd.mil/dpap/policy/policyvault/USA007579-12-DPAP.pdf>)

Accordingly, the updated product categories to be competed effective April 5, 2013, are:

- 5220 (Inspection Gages and Precision Layout Tools)
- 5335 (Metal Screening)
- 7210 (Household Furnishings)
- 7230 Draperies, Awnings, and Shades
- 8405 (Outerwear, Men's)

- 8415 (Clothing, Special Purpose)
- 8465 (Individual Equipment)
- 9905 (Signs, Advertising Displays and Identification Plates)

The statute, as implemented also requires DoD to:

(1) Include FPI in the solicitation process for items for which FPI's share of the DoD market is greater than five percent; a timely offer from FPI must be considered; and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v).

(2) Continue to be make acquisitions, in accordance with FAR Subpart 8.6., for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive or fair opportunity procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery.

(3) Section 827 allows modification of the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013-06091 Filed 03/14/2013 at 8:45 am; Publication
Date: 03/15/2013]